

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

**PACER Cover Sheet
for Electronically Filed Documents**

Any data shown here are current as of 06/10/06 . Any element of information on this form, except the received date, is subject to change as changes may be made to the Court's official docket.

Case Title: Furr's Supermarkets, Inc.

Case Number: 01-10779

Document Information

Description: Findings of Fact and Conclusions of Law Re: [2797-1] Objection To Claim filed by Trustee Yvette Gonzales to Claim of Pat S. Valdez; Claim Number 1266 in the amount of \$500,000.00 by Yvette Gonzales .

Received on: 2005-09-01 13:38:16.000

Date Filed: 2005-09-01 00:00:00.000

Date Entered On Docket: 2005-09-06 00:00:00.000

Filer Information

Submitted By: James Burke

If this form is attached to the document identified above, it serves as an endorsed copy of the document as it existed on the above date. To confirm that nothing has changed since then, review the docket.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
FURRS SUPERMARKETS, INC.
Debtor.

No. 11-01-10779 SA

**FINDINGS AND CONCLUSIONS AND ORDER
SUSTAINING CHAPTER 7 TRUSTEE'S OBJECTION
TO PAT VALDEZ'S CHAPTER 11 ADMINISTRATIVE CLAIM**

This matter is before the Court on the Chapter 7 Trustee's Objection to Pat Valdez's Chapter 11 Administrative Claim (doc. 2797). The parties submitted briefs (docs. 3031 and 3058). The facts are not disputed, and the Court finds that the objection is well taken.

FACTS

Pat Valdez ("Valdez") was a Furr's employee and was terminated on or about April 16, 1998. Shortly thereafter, his union demanded that he be reinstated. Furr's did not reinstate Valdez. In early 1999 the union wrote to Furr's asking it to rehire Valdez if there were any available positions. Furr's did not rehire Valdez. On February 8, 2001, Furr's filed a Chapter 11. On May 29, 2003, Valdez filed an administrative claim for \$500,000 for wrongful termination and wrongful failure to rehire.

CONCLUSIONS OF LAW

Valdez has a prepetition claim. Nat'l Labor Relations Bd. v. Greyhound Lines, Inc. (In re Eagle Bus Mfg., Inc.), 158

B.R. 421, 433-34 (S.D. Tex. 1993) (Employment claim for unfair labor practices arose from prepetition conduct and was a pre-petition claim; the fact that damages continued to accrue post-petition did not alter the character of the claim itself.)

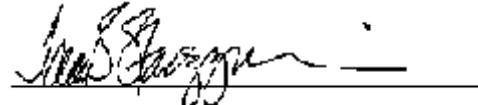
Section 503 governs the award of administrative expenses. Valdez's prepetition claim does not fit into any category in section 503. Compare Section 503(b)(1)(A) (the actual, necessary costs and expenses of preserving the estate, including wages for services rendered after the commencement of the case). See also Isaac v. Temex Energy, Inc. (In re Amarex, Inc.), 853 F.2d 1526, 1530 (10th Cir. 1988) (An expense is administrative only if it arises out of a transaction between the creditor and the trustee or debtor in possession and only to the extent that the consideration supporting the claim was supplied to and beneficial to the debtor in possession in the operation of the business.)

Valdez argues that Section 502(b)(7) contains no limitations on when the claim was incurred. Section 502 deals only with the allowance of claims, not their priority. It is therefore inapposite.

The Trustee's objection is well taken and should be sustained.

ORDER

IT IS ORDERED that the Chapter 7 Trustee's Objection to Pat Valdez's Chapter 11 Administrative Claim (doc. 2797) is sustained.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on September 1, 2005, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.

David T. Thuma
500 Marquette Avenue NW #650
Albuquerque, NM 87102

Steve H. Mazer
122 10th Street NW
Albuquerque, NM 87102

